

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
)
Petition of South Slope Cooperative Telephone )
Company, Inc. For an Order and Rule Pursuant to )
Section 251(h)(2) of the Communications Act ) WC Docket No. 04-347
Declaring that South Slope Cooperative Telephone )
Company, Inc. Shall Be Treated as an Incumbent )
Local Exchange Carrier in the Iowa Exchanges of )
Oxford, Tiffin and Solon )

NOTICE OF PROPOSED RULEMAKING

Adopted: October 7, 2008

Released: October 10, 2008

By the Commission:

Comment Date: (30 days after Federal Register publication of this Notice)

Comment Reply Date: (51 days after Federal Register Publication of this Notice)

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking, the Commission seeks comment on whether South Slope Cooperative Telephone Company, Inc. (South Slope) should be treated as an incumbent local exchange carrier (LEC) for purposes of section 251 of the Communications Act of 1934, as amended, (Communications Act or Act) in the Iowa exchanges of Oxford, Tiffin and Solon as provided for in section 251(h)(2) of the Act. The Commission also requests comment on the appropriate regulatory treatment of South Slope and Iowa Telecommunications Services, Inc. (Iowa Telecom), the legacy incumbent LEC in those exchanges pursuant to section 251(h)(1) of the Act, if the Commission concludes that South Slope should be accorded incumbent LEC treatment in the Oxford, Tiffin and Solon exchanges.

1 We are addressing the section 251(h)(2) status of South Slope in these exchanges through a rulemaking proceeding consistent with our prior practice and the relevant statutory language. See Petition of Mid-Rivers Telephone Cooperative, Inc. for Order Declaring It to Be an Incumbent Local Exchange Carrier in Terry, Montana Pursuant to Section 251(h)(2), WC Docket No. 02-78, Notice of Proposed Rulemaking, 19 FCC Rcd 23070 (2004). Section 251(h)(2) refers to Commission action "by rule" to treat a local exchange carrier (LEC) as an incumbent LEC for purposes of section 251. 47 U.S.C. § 251(h)(2).

2 47 U.S.C. § 251.

3 47 U.S.C. § 251(h)(2).

4 47 U.S.C. § 251(h)(1).

## II. BACKGROUND

2. **South Slope Petition.** On August 24, 2004, South Slope filed a petition with the Commission requesting that it be treated as an incumbent LEC in the Oxford, Tiffin and Solon exchanges.<sup>5</sup> South Slope is a cooperative telephone company that provides local exchange service and exchange access service to approximately 19,500 access lines in the general vicinity of Cedar Rapids and Iowa City, Iowa.<sup>6</sup> In 2001, South Slope began to construct “fiber and copper (loop) facilities” in the Oxford, Tiffin and Solon exchanges with the objective of providing these exchanges with the same advanced services available to its cooperative members/customers in other exchanges.<sup>7</sup> In addition to traditional local exchange service, South Slope states that it provides broadband service throughout these three exchanges.<sup>8</sup> South Slope initially estimated that it served about 86 percent of the approximately 817 customers in Oxford, about 85 percent of the approximately 1,310 customers in Tiffin, and about 82 percent of the approximately 1,902 customers in Solon.<sup>9</sup> South Slope stated that it had achieved this level of subscribership through facilities construction rather than the use of resale or unbundled network elements.<sup>10</sup> South Slope has since updated these estimates, stating that it serves approximately 90 percent of the subscribers in these three exchanges.<sup>11</sup> Iowa Telecom is currently the incumbent LEC in these exchanges.<sup>12</sup>

3. **Statutory Provisions.** Section 251 of the Act establishes different pro-competitive requirements for different categories of carriers.<sup>13</sup> Under section 251, incumbent LECs are subject to the most significant obligations, including non-discriminatory interconnection and unbundling obligations.<sup>14</sup>

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<sup>5</sup> See generally Petition of South Slope Cooperative Telephone Company, Inc. For an Order and Rule Pursuant to Section 251(h)(2) of the Communications Act Declaring that South Slope Cooperative Telephone Company, Inc. Shall Be Treated As an Incumbent Local Exchange Carrier in the Iowa Exchanges of Oxford, Tiffin and Solon, WC Docket No. 04-347 at 1 (filed Aug. 24, 2004) (South Slope Petition); see also *Pleading Cycle Established For Comments on Petition For Order Declaring South Slope Incumbent Local Exchange Carrier in Iowa Exchanges of Oxford, Tiffin, and Solon*, WC Docket No. 04-347, Public Notice, 19 FCC Rcd 17480 (2004). Iowa Telecom, Qwest Communications International, Inc. (Qwest), and the Iowa Utilities Board (Iowa Board) filed comments. South Slope, the National Telecommunications Cooperative Association, the Rural Iowa Independent Telephone Association, and the Iowa Board filed reply comments.

<sup>6</sup> South Slope Petition at 1-2.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.* at 6.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.*; South Slope Reply at 11.

<sup>11</sup> Letter from Benjamin H. Dickens, Jr. and Mary J. Sisak, Counsel for South Slope Cooperative Telephone Company, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-347 (filed Jan. 29, 2007) (South Slope January 2007 *Ex Parte* Letter). In particular, South Slope estimates that it serves 90.2 percent of the dial tone subscribers in the Solon exchange, 89.6 percent of the dial tone subscribers in the Tiffin exchange and 91.6 percent of the dial tone subscribers in the Oxford exchange. *Id.*

<sup>12</sup> These exchanges were originally served by GTE Midwest, Inc., which sold them to Iowa Telecom as part of a larger transaction. Iowa Telecom Opposition at 5; see also South Slope Petition at 3.

<sup>13</sup> See 47 U.S.C. § 251(a)-(c). All telecommunications carriers are subject to the requirements in section 251(a) of the Act. See 47 U.S.C. § 251(a). In addition to those requirements, local exchange carriers are also subject to the requirements of section 251(b). See 47 U.S.C. § 251(b). Incumbent local exchange carriers are subject to the requirements of section 251(c) in addition to all of the requirements applicable to telecommunications carriers and local exchange carriers. See 47 U.S.C. § 251(c).

<sup>14</sup> Section 251(c) obligations of incumbent LECs include the duty: to negotiate interconnection agreements in good faith; to provide specified non-discriminatory interconnection to requesting telecommunications carriers; to provide

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Section 251(h)(1) defines an incumbent LEC as a local exchange carrier that, on the date of enactment of the Telecommunications Act of 1996, provided local exchange service in an area and was either a member of the National Exchange Carrier Association (NECA),<sup>15</sup> or became a successor or assign of such a LEC.<sup>16</sup> Section 251(h)(2) provides that the Commission may provide by rule for the treatment of a LEC as an incumbent LEC for the purposes of section 251 if a three part test is satisfied.<sup>17</sup> Specifically, in order to find that a LEC should be treated as an incumbent LEC for purposes of section 251, the Commission must find that: (1) the LEC at issue occupies a market position within an area that is comparable to the position of a legacy incumbent LEC; (2) the LEC has “substantially replaced” the legacy incumbent LEC; and (3) the reclassification is consistent with the public interest, convenience, and necessity and the purposes of section 251.<sup>18</sup>

4. **Commission Orders.** In 2006, the Commission accorded Mid-Rivers Telephone Cooperative, Inc. (Mid-Rivers) incumbent LEC status pursuant to section 251(h)(2) in the Terry, Montana exchange where it had overbuilt the facilities of Qwest, the legacy incumbent LEC.<sup>19</sup> In that Order, the Commission found that the Terry exchange was an appropriate area for consideration of Mid-Rivers’ market position under section 251(h)(2)(A) and that Mid-Rivers occupied a market position comparable to that of a legacy incumbent LEC in the Terry exchange.<sup>20</sup> The Commission also found that Mid-Rivers

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requesting telecommunications carriers with unbundled access to the incumbent LEC’s network elements; to offer certain telecommunications services for resale at wholesale rates; to provide public notice of changes affecting transmission and routing of services using the incumbent LEC’s facilities or affecting the interoperability of its facilities; and to provide physical collocation of certain equipment belonging to other telecommunications carriers. 47 U.S.C. § 251(c)(1)-(6).

<sup>15</sup> NECA is an association, established by the Commission, for all “telephone companies that participate in the distribution of Carrier Common Line revenue requirement, pay long term support to association Common Line tariff participants, or receive payments from the transitional support fund administered by the association.” 47 C.F.R. § 69.601(b). The association was established “in order to prepare and file access charge tariffs on behalf of all telephone companies that do not file separate tariffs or concur in a joint access tariff of another telephone company for all access elements.” 47 C.F.R. § 69.601(a).

<sup>16</sup> 47 U.S.C. § 251(h)(1). We refer to these incumbent LECs as legacy incumbent LECs.

<sup>17</sup> 47 U.S.C. § 251(h)(2); *see also* 47 C.F.R. § 51.223 (implementing section 251(h)(2) of the Act).

<sup>18</sup> 47 U.S.C. § 251(h)(2); *see Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobil Radio Service Providers*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, 16110, para. 1248 (1996) (subsequent history omitted) (stating that a “clear and convincing” showing should be required to satisfy the requirements of section 251(h)(2)).

<sup>19</sup> *See Petition of Mid-Rivers Telephone Cooperative, Inc. for Order Declaring It to Be an Incumbent Local Exchange Carrier in Terry, Montana Pursuant to Section 251(h)(2)*, WC Docket No. 02-78, Report and Order, 21 FCC Rcd 11506 (2006) (*Mid-Rivers Order*). In the Commission’s only prior section 251(h)(2) decision, it found that the Guam Telephone Authority (GTA) should be treated as an incumbent LEC pursuant to this provision. The circumstances involved differed significantly from those in *Mid-Rivers* since GTA was the sole provider of local exchange service in Guam, but did not qualify as an incumbent LEC under section 251(h)(1) because it had not been a member of NECA on February 8, 1996, as required by the statute, and was not a successor or assign of such an incumbent LEC. *See Guam Public Utilities Commission Petition for Declaratory Ruling Concerning Section 3(37) and 251(h) of the Communications Act; Treatment of the Guam Telephone Authority and Similarly Situated Carriers as Incumbent Local Exchange Carriers under Section 251(h)(2) of the Communications Act*, CCB Pol. 96-18, CC Docket No. 97-134, Declaratory Ruling and Notice of Proposed Rulemaking, 12 FCC Rcd 6925-26, para. 1 (1997); *Treatment of the Guam Telephone Authority and Similarly Situated Carriers as Incumbent Local Exchange Carriers under Section 251(h)(2) of the Communications Act*, CC Docket No. 97-134, Report and Order, 13 FCC Rcd 13765 (1998).

<sup>20</sup> *Mid-Rivers Order*, 21 FCC Rcd at 11510-12, paras. 9-13.

had “substantially replaced” Qwest in the Terry exchange,<sup>21</sup> and that treating Mid-Rivers as an incumbent LEC for purposes of section 251 in the Terry exchange was consistent with the public interest.<sup>22</sup> The Commission also noted that the treatment of Mid-Rivers as an incumbent for purposes of interstate access charges, federal universal service support and other interstate purposes would be addressed as appropriate in separate proceedings.<sup>23</sup> The Commission provided, however, that Mid-Rivers would remain subject to existing interstate competitive LEC non-dominant regulation pending further Commission action, indicating that it expected to address Mid-Rivers’ long-term interstate regulatory treatment when Mid-Rivers filed a study area boundary waiver.<sup>24</sup>

5. The Commission also addressed the subsequent interstate regulatory treatment of Qwest in the Terry, Montana exchange.<sup>25</sup> The Commission concluded that the statute does not automatically change the status of the legacy incumbent LEC and make it a competitive LEC when another LEC is designated as an incumbent LEC in a particular area under section 251(h)(2). Instead, the Commission found that the Communications Act and the Commission’s rules provide for the elimination of unnecessary regulation through the removal of dominant carrier regulation and forbearance under section 10 of the Act.<sup>26</sup> The Commission found that Qwest should be treated as a non-dominant carrier in the Terry exchange for purposes of its interstate service offerings.<sup>27</sup> The Commission did not address broader regulatory relief through forbearance at that time, although it made clear that Qwest was welcome to pursue such relief. Qwest subsequently filed a request for forbearance<sup>28</sup> and the Commission granted most of the relief ultimately requested.<sup>29</sup>

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<sup>21</sup> *Id.* at 11513-14, paras. 14-15.

<sup>22</sup> *Id.* at 11514-15, paras. 16-19.

<sup>23</sup> *Id.* at 11509, para. 8. On March 14, 2008, Mid-Rivers filed a petition for waiver of the Commission’s study area boundary freeze in order to incorporate its Terry, Montana operations into its pre-existing Montana study area in which it is the legacy incumbent LEC. See Mid-Rivers Telephone Cooperative, Inc. Petition for Waiver of the Definition of “Study Area” of the Appendix-Glossary of Part 36 of the Commission’s Rules; Petition for Waiver of Section 69.3(e)(11) of the Commission’s Rules, CC Docket No. 96-45 (filed Mar. 14, 2008). The Wireline Competition Bureau sought comment on Mid-Rivers’ petition. See *Comment Sought on the Petition of Mid-Rivers Telephone Cooperative, Inc. to Waive the Study Area Boundary Freeze, as Codified in Part 36, and Section 69.39(e)(11) of the Commission’s Rules*, CC Docket No. 96-45, Public Notice, 23 FCC Rcd 5558 (2008).

<sup>24</sup> *Mid-Rivers Order*, 21 FCC Rcd at 11521-22, para. 34.

<sup>25</sup> *Id.* at 11515-21, paras. 20-34.

<sup>26</sup> *Id.* at 11516-17, paras. 22-23 (citing 47 U.S.C. § 160).

<sup>27</sup> *Id.* at 11518-21, paras. 25-34.

<sup>28</sup> *Id.* at 11515-16, 11517-18, paras. 20, 24. See *Pleading Cycle Established for Comments on Qwest Corporation’s Petition for Forbearance under 47 U.S.C. § 160(c) from Sections 251(c) and 271(c) and from Incumbent Local Exchange Carrier Treatment in the Terry, Montana Local Exchange*, WC Docket No. 07-9, Public Notice, 22 FCC Rcd 2173 (WCB 2007); *Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Resale, Unbundling, and Other Incumbent Local Exchange Requirements Contained in Sections 251 and 271 of the Telecommunications Act of 1996 in the Terry, Montana Exchange*, WC Docket No. 07-9, Order, 23 FCC Rcd 100 (WCB 2008) (extending date for action on forbearance request).

<sup>29</sup> *Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Resale, Unbundling and Other Incumbent Local Exchange Requirements Contained in Sections 251 and 271 of the Telecommunications Act of 1996 in the Terry, Montana Exchange*, WC Docket No. 07-9, Memorandum Opinion and Order, 23 FCC Rcd 7257 (2006). Qwest withdrew its request for forbearance from sections 224, 259, 275, and 271(c)(2)(B)(iii). See Letter from Daphne E. Butler, Corporate Counsel, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-9 (filed Mar. 28, 2008); Letter from Daphne E. Butler, Corporate Counsel, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-9 (filed Mar. 31, 2008).

### III. DISCUSSION

#### A. Section 251(h)(2) – Treatment as an Incumbent LEC for Purposes of Section 251

6. We seek comment on whether South Slope satisfies the three-part test in section 251(h)(2) and should be treated as an incumbent LEC for purposes of section 251 in the Solon, Tiffin and Oxford exchanges. We do not address the treatment of South Slope as an incumbent in these three exchanges for purposes of interstate access charges, federal universal service support and other interstate purposes. These issues will be addressed as appropriate in other proceedings, including any study area boundary waiver petition that South Slope may file with the Commission.

7. **Section 251(h)(2)(A) – Comparable Market Position Within an Area.** Section 251(h)(2)(A) of the three part test for treatment of a LEC as an incumbent LEC for purposes of section 251 requires that “such carrier occup[y] a position in the market for telephone exchange service within an area that is comparable to the position occupied by [a legacy incumbent LEC.]”<sup>30</sup> In the *Mid-Rivers Order*, the Commission concluded that the Terry exchange was the relevant area for analyzing Mid-Rivers’ market position, and found that Mid-Rivers occupied a position in the market for telephone exchange service within the Terry exchange comparable to that of a legacy incumbent LEC based on Mid-Rivers’ extensive facilities build-out and estimates of Mid-Rivers’ subscribership in the Terry exchange ranging from 85 to 93 percent.<sup>31</sup> Based on this analysis, we tentatively conclude that the Solon, Tiffin and Oxford exchanges are the relevant area for analyzing South Slope’s market position. We also tentatively conclude that South Slope occupies a market position in this area that is comparable to that occupied by a legacy incumbent LEC in light of South Slope’s extensive facilities build-out and its estimate that it now provides local exchange service to approximately 90 percent of the subscribers in these exchanges over its own facilities.<sup>32</sup> We seek comment on these tentative conclusions.

8. **Section 251(h)(2)(B) – Substantially Replaced Legacy Incumbent LEC.** The section 251(h)(2)(B) portion of the three part test for treatment as an incumbent LEC for purposes of section 251 requires a finding that “such carrier has substantially replaced an incumbent LEC described in paragraph (1)” -- in this case, Iowa Telecom.<sup>33</sup> In the *Mid-Rivers Order*, the Commission concluded that Mid-Rivers had substantially replaced Qwest, the legacy incumbent LEC, because Mid-Rivers served approximately 85 to 93 percent of the access lines in the Terry exchange largely over its own facilities.<sup>34</sup> In light of South Slope’s estimate that it serves approximately 90 percent of the subscribers in the Solon, Tiffin and Oxford exchanges over its own facilities,<sup>35</sup> we tentatively conclude that South Slope has substantially replaced Iowa Telecom as the local exchange service provider in these exchanges. We seek comment on this tentative conclusion.

9. **Section 251(h)(2)(C) – Consistent with the Public Interest.** The section 251(h)(2)(C) portion of the three part test requires that the Commission find that treating a LEC as an incumbent LEC for purposes of section 251 “is consistent with the public interest, convenience, and necessity and with the

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<sup>30</sup> 47 U.S.C. § 251(h)(2)(A).

<sup>31</sup> *Mid-Rivers Order*, 21 FCC Rcd at 11510-12, paras. 9-13. The Commission stated that “even the lowest estimates show a very high subscribership level such that we need not resolve the differences in the record.” *Id.* at 11511, n.33.

<sup>32</sup> South Slope January 2007 *Ex Parte* Letter; South Slope Petition at 3; South Slope Reply at 11.

<sup>33</sup> 47 U.S.C. § 251(h)(2)(B).

<sup>34</sup> *Mid-Rivers Order*, 21 FCC Rcd at 11513-14, paras. 14-15.

<sup>35</sup> See South Slope January 2007 *Ex Parte* Letter. See also note 32 *supra*.

purposes of [section 251].”<sup>36</sup> In the *Mid-Rivers Order*, the Commission noted that the public interest analysis under section 251(h)(2)(C) focuses on the role of incumbent carriers under section 251 specifically. It does not address whether a LEC to be treated as an incumbent LEC for purposes of section 251 should be treated as an incumbent LEC for purposes of statutory provisions or Commission rules other than section 251.<sup>37</sup> The Commission concluded that treating Mid-Rivers as an incumbent LEC for purposes of section 251 satisfied the section 251(h)(2)(C) public interest requirement.<sup>38</sup> We seek comment on whether the treatment of South Slope as an incumbent LEC for purposes of section 251 in the Solon, Tiffin and Oxford exchanges would satisfy that public interest standard.

## B. Subsequent Regulation

10. As previously noted, in the *Mid-Rivers Order*, the Commission found that the Act does not automatically convert the legacy incumbent LEC into a competitive LEC when another LEC is designated as an incumbent LEC in a particular area under section 251(h)(2). Instead, the Commission stated that the elimination of unnecessary regulation is appropriately addressed through the removal of dominant carrier regulation and forbearance under section 10 of the Act.<sup>39</sup>

11. **Iowa Telecom.** In the *Mid-Rivers Order*, the Commission found that Qwest lacked market power in the Terry exchange and should be treated as a non-dominant carrier for its interstate telecommunications services in that exchange.<sup>40</sup> In reaching this conclusion, the Commission assessed whether Qwest had market power in the Terry exchange using the Commission’s analytical framework set out in the *AT&T Reclassification Order*.<sup>41</sup> The Commission subsequently granted Qwest forbearance from additional regulatory requirements in response to a petition that it filed.<sup>42</sup> Consistent with these orders, we tentatively conclude that Iowa Telecom should be given non-dominant regulatory treatment for interstate purposes in the Oxford, Tiffin and Solon exchanges, if South Slope is accorded incumbent LEC status for purposes of section 251. We seek comment on this tentative conclusion. Iowa Telecom may

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<sup>36</sup> 47 U.S.C. § 251(h)(2)(C).

<sup>37</sup> *Mid-Rivers Order*, 21 FCC Rcd at 11514, para. 17.

<sup>38</sup> *Id.* at 11514-15, paras. 18-19.

<sup>39</sup> *Id.* at 11516-17, paras. 22-23 (citing 47 U.S.C. § 160). In the *Mid-Rivers Order*, we also indicated that Commission action on the study area boundary waiver petition that Mid-Rivers stated it planned to file asking that the Terry exchange be included in its study area could be accompanied by further changes in the regulatory status of Qwest in the Terry exchange. *Id.* at 11521-22, para. 35.

<sup>40</sup> *Id.* at 11519-21, paras. 29-34. Dominant carriers are subject to price cap or rate-of-return regulation, and must file tariffs and cost support for some services on a minimum of seven or fifteen days’ notice. *See* 47 U.S.C. §§ 203(b), 204(a)(3); *see also* 47 C.F.R. §§ 61.38, 61.41, 61.58. The Commission has found that direct rate regulation is generally not necessary for non-dominant carriers, and has allowed such carriers to file tariffs on one day’s notice without cost support. *See* 47 C.F.R. § 61.23; *see also Tariff Filing Requirements for Non-Dominant Common Carriers*, CC Docket No. 93-36, Order, 10 FCC Rcd 13653, 13654, paras. 4-5 (1995). In addition, non-dominant carriers are required to wait only 30 days before their applications to discontinue, reduce or impair service can be granted, as opposed to a 60-day waiting period for dominant carriers. *See* 47 C.F.R. § 63.71(c). Moreover, non-dominant carriers are accorded presumptive streamlined treatment under section 214 of the Act for certain types of transfers of control although dominant carriers must follow more rigorous procedures. *See* 47 C.F.R. § 63.03(b).

<sup>41</sup> *See Mid-Rivers Order*, 21 FCC Rcd at 11519-20, para. 29; *see also Motion of AT&T Corp. to Be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd 3271, 3293-94, paras. 38-39 (1995). In assessing whether Qwest should continue to be treated as a dominant carrier in the Terry exchange, the Commission considered the following four factors: (1) market share; (2) supply elasticity; (3) demand elasticity; and (4) Qwest’s cost structure, size and resources. *Mid-Rivers Order*, 21 FCC Rcd at 11519-20, para. 29.

<sup>42</sup> *See* note 29 and accompanying text *supra*.

also request additional deregulation in the Oxford, Tiffin and Solon exchanges by filing a formal petition for forbearance consistent with the Commission's rules.

12. **South Slope.** In the *Mid-Rivers Order*, the Commission did not address the appropriate long-term regulatory treatment of Mid-Rivers in the Terry exchange.<sup>43</sup> As a result, Mid-Rivers remained subject to existing competitive LEC non-dominant regulation for its interstate telecommunications services pending further Commission action.<sup>44</sup> Given Mid-Rivers' expressed intention of filing a study area boundary waiver petition seeking to incorporate the Terry exchange into its existing study area, and including the Terry lines in the NECA pool, the Commission noted that Mid-Rivers may wish to have its Terry operations subject to dominant carrier regulation.<sup>45</sup> In light of this, the Commission decided to address Mid-Rivers' regulatory classification in conjunction with the study area boundary waiver request that Mid-Rivers stated it planned to file.<sup>46</sup>

13. We seek comment on whether we should address, in this proceeding, the long-term regulation of South Slope's interstate operations in the Oxford, Tiffin and Solon exchanges if South Slope is accorded section 251(h)(2) incumbent LEC status. If the Commission addresses long-term regulation of South Slope's interstate operations in these exchanges in the current proceeding, what regulations should apply to South Slope's interstate service offerings? For example, should South Slope be regulated as a dominant carrier in these three exchanges if it is treated as a section 251(h)(2) incumbent LEC for purposes of section 251?

#### IV. PROCEDURAL MATTERS

##### A. Initial Regulatory Flexibility Certification

14. In this Notice, the Commission seeks comment on whether South Slope should be treated as an incumbent LEC for purposes of section 251 of the Act<sup>47</sup> in the Iowa exchanges of Oxford, Tiffin and Solon pursuant to section 251(h)(2) of the Act. The Commission also requests comment on the appropriate regulatory treatment of South Slope and Iowa Telecom, the legacy incumbent LEC in those exchanges, if the Commission concludes that South Slope should be accorded incumbent LEC treatment in these exchanges under section 251(h)(2) of the Act.

15. South Slope is a cooperative telephone company that provides local exchange service and exchange access service to approximately 19,500 access lines in the general vicinity of Cedar Rapids and Iowa City, Iowa. Iowa Telecom is the legacy incumbent LEC that serves the Oxford, Solon, and Tiffin, Iowa exchanges. Because the proposed rule affects only South Slope and Iowa Telecom, we find that any potential action in this proceeding would not affect a substantial number of small entities.

16. Therefore, we certify that the proposals in this Notice, if adopted, will not have a significant economic impact on a substantial number of small entities.

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<sup>43</sup> *Mid-Rivers Order*, 21 FCC Rcd at 11521-22, para. 35.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> 47 U.S.C. § 251.

17. The Commission will send a copy of the Notice, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.<sup>48</sup> This initial certification will also be published in the Federal Register.<sup>49</sup>

## B. Paperwork Reduction Act

18. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 47 U.S.C. § 3506(c)(4).

## C. Other Procedural Matters

### 1. Ex Parte Presentations

19. The rulemaking this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>50</sup> Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required.<sup>51</sup> Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission’s rules.<sup>52</sup>

### 2. Comment Filing Procedures

20. Pursuant to sections 1.415 and 1.419 of the Commission’s rules,<sup>53</sup> interested parties may file comments and reply comments regarding the Notice on or before the dates indicated on the first page of this document. **All filings related to this Notice of Proposed Rulemaking should refer to WC Docket No. 04-347.** Comments may be filed using: (1) the Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- ECFS filers must transmit one electronic copy of the comments for WC Docket No. 04-347. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.

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<sup>48</sup> 5 U.S.C. § 605(b).

<sup>49</sup> *Id.*

<sup>50</sup> 47 C.F.R. §§ 1.200 *et seq.*

<sup>51</sup> *See* 47 C.F.R. § 1.1206(b)(2).

<sup>52</sup> 47 C.F.R. § 1.1206(b).

<sup>53</sup> 47 C.F.R. §§ 1.415, 1.419.

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.
- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12<sup>th</sup> Street, S.W., Washington D.C. 20554.

21. Parties should send a copy of their filings to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-C140, 445 12th Street, S.W., Washington, D.C. 20554, or by e-mail to [cpdcopies@fcc.gov](mailto:cpdcopies@fcc.gov). Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

22. Documents in WC Docket No. 04-347 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street S.W., Room CY-A257, Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

### 3. Accessible Formats

23. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov); phone: 202-418-0530 or TTY: 202-418-0432.

## V. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i)-4(j), 201, 203, 214, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 201, 203, 214, 251, 303(r), this Notice of Proposed Rulemaking IS ADOPTED.

25. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary